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BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
 )  
ILLINOIS COMMERCE COMMISSION, )  
On Its Own Motion )  
 ) No. 06-0389  
Rulemaking regarding demand )  
response programs. )

Chicago, Illinois  
June 13, 2006

Met, pursuant to notice, at 11:00 a.m.

BEFORE:

Mr. David Gilbert, Administrative Law Judge

APPEARANCES:

MR. ALLAN GOLDENBERG  
69 West Washington Street  
Suite 3130  
Chicago, IL 60602  
for Cook County State's Attorney's Office;

MR. RISHI GARG  
100 West Randolph Street  
Floor 11  
Chicago, IL 60601  
for the People of the State of Illinois;

MS. CARLA SCARSELLA and MS. BRANDY BROWN  
160 North LaSalle Street  
Suite C-800  
Chicago, IL 60601  
for ICC Staff witnesses;

1 APPEARANCES (cont.):

2 MR. ROBERT KELTER and MS. JESSICA FALK  
208 South LaSalle Street  
3 Suite 1760  
Chicago, IL 60604  
4 for the Citizens Utility Board;

5 MR. JOHN MOORE  
35 East Wacker Drive  
6 Suite 1300  
Chicago, IL 60601  
7 for the Environmental Law and Policy Center;

8 MS. LAURA EARL  
77 West Wacker Drive  
9 Chicago, IL 60601  
for the Ameren Companies;

10  
MR. RONALD D. JOLLY  
11 30 North LaSalle Street  
Suite 900  
12 Chicago, IL 60602  
for the City of Chicago;

13  
MR. MICHAEL S. PABIAN and MR. BRAD PERKINS  
14 10 South Dearborn Street  
35th Floor  
15 Chicago, IL 60603  
for Commonwealth Edison Company;

16  
MR. HANS DETWEILER  
17 100 West Randolph Street  
Suite 3-400  
18 Chicago, IL 60601  
for the Illinois Department of Commerce and  
19 Economic Opportunity;

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21  
22

1 APPEARANCES BY PHONE:

2 MR. DAMON XENOPOULOS  
3 1025 Thomas Jefferson Street NW  
4 8th Floor, West Tower  
5 Washington, DC 20007  
6 for Nucor Steel Kankakee;

7 MR. DAVID FEIN  
8 550 West Washington Boulevard  
9 Suite 300  
10 Chicago, IL 60661  
11 for Constellation New Energy, Inc.;

12 MS. KAREN HUIZENGA  
13 106 East Second Street  
14 Davenport, IA 52801  
15 for MidAmerican Energy Company;

16 MR. ERIC BRAMLET  
17 P.O. Box 278  
18 Mt. Carmel, IL 62863  
19 for Mt. Carmel Public Utility Company;

20 MR. JOSEPH L. LAKSHMANAN  
21 2828 North Monroe Street  
22 Decatur, IL 62526  
for Dynegy;

MR. RYAN ROBERTSON  
P.O. Box 735  
1939 Delmar Avenue  
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for Illinois Industrial Energy Consumers.

21 SULLIVAN REPORTING COMPANY, by  
22 Jean M. Plomin, CSR, RPR  
License No. 084-003728

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
None .					

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
None .		

1 JUDGE GILBERT: Pursuant to the authority of  
2 the Illinois Commerce Commission, I now call Docket  
3 No. 06-0389.

4 Can I have the appearances for the  
5 record, please, beginning right here.

6 MR. GOLDENBERG: Allan Goldenberg, Assistant  
7 State's Attorney on behalf of the Cook County State's  
8 Attorney's Office, 69 West Washington, Suite 3130,  
9 Chicago, Illinois, 60602.

10 MR. GARG: On behalf of the People of the State  
11 of Illinois, Rishi Garg from the Office of the  
12 Illinois Attorney General, 100 West Randolph,  
13 Floor 11, Chicago, Illinois, 60601.

14 MS. SCARSELLA: Appearing on behalf of staff  
15 witnesses of the Illinois Commerce Commission, Carla  
16 Scarsella and Brandy Brown, 160 North LaSalle Street,  
17 Suite C-800, Chicago, Illinois, 60601.

18 MR. KELTER: On behalf of the Citizens Utility  
19 Board, Robert Kelter and Jessica Falk, 208 South  
20 LaSalle, Suite 1760, Chicago, 60604.

21 MR. MOORE: John Moore on behalf of the  
22 Environmental Law and Policy Center, 35 East Wacker,

1 Suite 1300, Chicago, Illinois, 60601.

2 MS. EARL: On behalf of the Ameren Companies,  
3 Laura Earl with Jones Day at 77 West Wacker, Chicago,  
4 Illinois, 60601.

5 MR. JOLLY: On behalf of the City of Chicago,  
6 Ronald D. Jolly, 30 North LaSalle, Suite 900,  
7 Chicago, Illinois, 60602.

8 MR. PABIAN: On behalf of Commonwealth Edison  
9 Company, Michael S. Pabian and Brad Perkins, 10 South  
10 Dearborn Street, 35th Floor, Chicago, Illinois,  
11 60603.

12 MR. DETWEILER: On behalf of the Illinois  
13 Department of Commerce and Economic Opportunity, Hans  
14 Detweiler, 100 West Randolph, Suite 3-400, Chicago,  
15 Illinois, 60601. And, your Honor, I am not an  
16 attorney. But if we do intervene in this case, our  
17 intervention will be filed by our Office of General  
18 Counsel.

19 JUDGE GILBERT: All right. That would seem to  
20 be everyone present in the hearing room.

21 MR. FEIN: Judge Gilbert, this is David Fein.  
22 After Laura Earl from Ameren, none of the other

1 parties you could hear on the phone.

2 JUDGE GILBERT: Okay.

3 MR. FEIN: They don't have to go through it  
4 again. Maybe you could just run them down at the end  
5 or something.

6 JUDGE GILBERT: The others parties were the  
7 City of Chicago, ComEd and DCEO.

8 MR. XENOPOULOS: Judge, with a teleconference,  
9 I'm not sure whether you're taking appearances from  
10 the phone?

11 JUDGE GILBERT: I'm sorry? I couldn't hear a  
12 word of that. Say it again.

13 MR. XENOPOULOS: Have you taken appearances  
14 from the phone?

15 JUDGE GILBERT: No. I would like to. So go  
16 ahead.

17 MR. XENOPOULOS: This is Damon Xenopoulos of  
18 Brickfield, Burchette, Ritts & Stone on behalf of  
19 Nucor Steel Kankakee. We're at 1025 Thomas Jefferson  
20 Street Northwest, 8th Floor, West Tower, Washington,  
21 DC, 20007.

22 JUDGE GILBERT: Would the previous speaker,

1     please, back to the beginning, repeat your name for  
2     the court reporter and spell it this time.

3             MR. XENOPOULOS:   Certainly.   First name is  
4     Damon, D-a-m-o-n.   Last name is Xenopoulos.   It  
5     starts with X, as in X-ray, e-n for Nancy, o-p for  
6     Peter, o-u-l for Larry, o-s for Sam.

7             MR. FEIN:   David Fein, F-e-i-n, on behalf of  
8     Constellation New Energy, Inc., 550 West Washington  
9     Boulevard, Suite 300, Chicago, Illinois, 60661.

10            MS. HUIZENGA:   Karen Huizenga -- that's  
11     H-u-i-z-e-n-g-a -- appearing on behalf of MidAmerican  
12     Energy Company, 106 East Second Street, Davenport,  
13     Iowa, 52801.

14            MR. BRAMLET:   Eric Bramlet appearing on behalf  
15     of Mt. Carmel Public Utility Company.   Mailing  
16     address is Post Office Box 278, Mt. Carmel, Illinois,  
17     62863.   Telephone number is (618) 263-3502.

18            MR. LAKSHMANAN:   Joseph L. Lakshmanan,  
19     L-a-k-s-h-m-a-n-a-n, 2828 North Monroe Street,  
20     Decatur, Illinois, 62526.   Phone number is  
21     (217) 872-2326 appearing on behalf of Dynegy.

22            MR. ROBERTSON:   On behalf of Abbott



1     Laboratories, Inc., Caterpillar, Inc., and Conoco  
2     Phillips Company and the Illinois Industrial  
3     Consumers, Ryan Robertson, Lueders, Robertson &  
4     Konzen, PO Box 735, 1939 Delmar Avenue, Granite City,  
5     Illinois, 62040.

6             JUDGE GILBERT: All right. I assume from the  
7     silence there's no one else on the telephone that  
8     needs to appear? Okay.

9                     I have way too many parties. Some of  
10    you have to get out of the case.

11                    Let's go off the record for a moment.

12                             (Whereupon, a discussion was had  
13                             off the record.)

14             JUDGE GILBERT: I've asked the parties to give  
15    me a sense off the record of where they wanted to  
16    take this case. I did have a conversation with Judge  
17    Sainsot who has, I believe, 06-0388, if that's the  
18    correct --

19             MS. SCARSELLA: Yes.

20             MR. MOORE: Yes.

21             JUDGE GILBERT: And that's energy efficiency, I  
22    believe.

1           MR. MOORE:   Yes.

2           JUDGE GILBERT:   I understand there's an initial  
3   briefing schedule only; there's not a testimonial  
4   schedule; is that correct?

5           MS. SCARSELLA:   Yes.

6           JUDGE GILBERT:   I wasn't clear as to whether  
7   that was the most efficacious thing to be doing.   We  
8   need to talk about that.   In other words, if you came  
9   in thinking this would be a slam dunk, we'll simply  
10   do the same thing we're doing in Judge Sainsot's  
11   case, I'm not so sure.   I'm not saying that we won't  
12   either.   I just need to hear more rationale than I've  
13   heard thus far as to why we would proceed in that  
14   way.

15                            Maybe someone wants to volunteer to  
16   kind of capture for our record here why you're  
17   proceeding as you are in 0388.   If you would like to  
18   take the lead on that.

19           MS. SCARSELLA:   Sure.   Just initially Staff is,  
20   first of all, not very clear as to what type of a  
21   proposed rule the Commission is seeking on demand  
22   response.   It's a very large area.   So I think it

1 would add to the clarity and direction of any rules  
2 that the parties submit if we have all kind of in  
3 mind what it is we are to achieve here.

4 And, secondly, it is not clear to  
5 Staff that the Commission currently has the authority  
6 to enact such rules, whatever it is we deem these  
7 rules should accomplish.

8 And so before we actually get to the  
9 meat of the matter, it may be useful to determine  
10 what it is the Commission can do so what we end up at  
11 is something that can actually be enacted and  
12 utilized by the utilities and residents, et cetera.

13 JUDGE GILBERT: Okay. Does anyone else want to  
14 speak in support of proceeding as you are doing in  
15 the other case?

16 MR. MOORE: Your Honor, I think that I'd like  
17 to --

18 JUDGE GILBERT: Let me ask, Mr. Moore, are you  
19 speaking in support of or are you going to speak in  
20 opposition to it?

21 MR. MOORE: No. I'm not going to oppose it. I  
22 would like to add just a little gloss to it. I think

1 my emphasis is on the legal authority issue, and we  
2 can use examples of demand response programs to  
3 perhaps illustrate the extent of legal authority. I  
4 don't want to put the cart before the horse too much  
5 and sort of get too deep into what kinds of programs  
6 we're doing before we go through the process.

7 I think my interest and perhaps some  
8 of the other parties' interest is in making sure the  
9 Commission has the legal authority to do this before  
10 committing a lot of our collective time on something  
11 without that being clear one way or the other in  
12 having a Commission position on it. So to that  
13 extent, I would like resolution of the legal  
14 authority issue earlier rather than later to the  
15 extent that's possible from the Commission's  
16 perspective.

17 JUDGE GILBERT: Okay.

18 MR. KELTER: Could I explain a little bit  
19 further? I think part of the thinking last time with  
20 Judge Sainsot was first there was discussion on just  
21 briefing the legal issue and then we discussed the  
22 fact that different people may have different ideas

1     about what programs they want or how they want them  
2     to be implemented. And in terms of legal authority,  
3     if you don't set forth some parameters for what  
4     you're looking for, then it's hard to determine  
5     whether it's legal to proceed down that course. So  
6     that was the reason for sort of combining the two  
7     things to at least some extent.

8             JUDGE GILBERT: Okay. One of what you're  
9     calling the two things I have no problem with. I  
10    just assume that's the meat of the case anyway.  
11    Functionally what we're going to have to do is draft  
12    a set of rules if indeed we have the authority to  
13    draft rules at all. So Part 1 of what you were  
14    describing is inherently part of the case. Part 2 is  
15    also inherently part of the case, but I'm not sure  
16    how to get to Part 2 until Part 1 has been  
17    identified.

18            MR. JOLLY: Right.

19            JUDGE GILBERT: I mean --

20            MR. KELTER: Part 2 being the legality?

21            JUDGE GILBERT: It sounds like what you're --

22            MR. MOORE: No. Part 2 being the actual rules

1 themselves.

2 JUDGE GILBERT: No, no. You've got it  
3 backwards. That's probably my fault.

4 What I thought I understood about  
5 what's been said so far here, what is being done in  
6 the other case is that you're first examining the  
7 parameters of legal authority without knowing what  
8 your proposals might be, and that seems to be a very  
9 abstract exercise.

10 Am I not correct and, in fact, doesn't  
11 the Staff report say that both Ameren and ComEd have  
12 demand side management programs in place? Aren't  
13 those tariff programs?

14 MR. PABIAN: Yes.

15 JUDGE GILBERT: So those programs have already  
16 been brought to the Commission for the Commission's  
17 approval, have they not?

18 MR. PABIAN: They're a tariff, and they've gone  
19 through that process.

20 JUDGE GILBERT: So since no one's decided to  
21 challenge those, I guess there's some authority for  
22 the Commission to do something with respect to demand

1 side management. So wouldn't we first need to know  
2 what it is you plan to do before we can look at its  
3 legal authority?

4 MS. SCARSELLA: Your Honor, that's why I  
5 suggested that the parties first address their  
6 parameters, what they envision this rule to be  
7 because the discussion of the legal issue is somewhat  
8 meaningless because it's obvious that the Commission  
9 has the ability for approval; it has rulemaking  
10 authority.

11 JUDGE GILBERT: Well, it's not just the ability  
12 to enact rules; it's also the ability to approve  
13 demand side management programs. Both those things  
14 are true.

15 MS. SCARSELLA: Well, no. I just wanted to add  
16 that. That's why I suggested that in addressing the  
17 legal issues, the parties also, you know, not make  
18 specific proposals but generally address what they  
19 see the goals of these rules to achieve because then  
20 it gives meaning to the legal argument issue, the  
21 legal issue -- legal portion.

22 JUDGE GILBERT: Okay. Why is this being done

1 in the form of a brief rather than in the form of  
2 testimony? Is that the economics of the parties not  
3 wanting to have to commit to witnesses at this point?

4 MS. SCARSELLA: Well, I guess --

5 JUDGE GILBERT: Which is a good reason.

6 MS. SCARSELLA: Staff viewed it as a legal  
7 issue. And I guess that's why we proposed it to be  
8 in the part of the briefing schedule as opposed to  
9 testimony at this point.

10 JUDGE GILBERT: Maybe I'm getting hung up on  
11 this procedurally but it feels to me like it's almost  
12 in the nature of a motion to dismiss for want of  
13 jurisdiction. Now, I know it's not technically that.  
14 I understand that. But I'm saying it has the feeling  
15 of a dismissal motion that we're first deciding  
16 whether we even have the authority to consider this  
17 case. And I kind of think we do have some authority  
18 and we don't really have an argument until we have  
19 some proposals. And I'm wondering why you wouldn't  
20 begin with some testimonial proposals.

21 MS. EARL: Your Honor, if I may, the Ameren  
22 Companies believe that it might be helpful to



1     contemplate some workshops within the structure of  
2     this docket to informally gather the parties, talk  
3     about the proposals and not to delay the briefing  
4     schedule process if there is going to be one. But we  
5     believe it might be helpful for all the parties to  
6     talk informally about the ideas of what parties want  
7     to do, what they want to implement before we get  
8     around to discussing the legal issues.

9             JUDGE GILBERT: Any more thoughts on that?

10            MR. KELTER: Well, I'm not sure where we come  
11     down on having workshops, but I think we need a  
12     little bit better framework for this before we start  
13     workshops.

14                    And you had mentioned something before  
15     that I want to discuss which is about filing  
16     testimony. I'm not sure that this shouldn't be done  
17     as a notice and comment rulemaking rather than the  
18     filing of expert testimony in adjudicating this. So  
19     I at least wanted to put that on the table before we  
20     go further.

21            JUDGE GILBERT: Who would you envision drafting  
22     the rules that would be part of the notice and

1 comment process?

2 MR. KELTER: Well, I think it's a little --  
3 it's an unusual procedure because generally when we  
4 have rulemaking, we start with a set of proposed  
5 rules. And in this case, we're apparently not going  
6 to do that. But I don't know that -- I'm not sure if  
7 the aim of a workshop process is to produce  
8 everybody's agreed rules, but one way to do it is to  
9 just let everybody file their proposed rules and let  
10 the other parties comment on them.

11 MS. EARL: I think the idea behind the  
12 workshops is that it provides for a more -- an  
13 informal forum for the parties to discuss openly  
14 about what the issues are, what the concerns are,  
15 what the goals are, and not necessarily to arrive at  
16 an agreement between all the parties but just to  
17 understand where all the parties are coming from and  
18 what possible -- what the goals are and what possible  
19 obstacles there may be.

20 MR. MOORE: Why can't you have a workshop or  
21 two and have the staff draft up a proposed rule?

22 MS. SCARSELLA: No. Actually, the Commission

1 in the initiating order, it states the Commission is  
2 interested in those proposals of public utilities,  
3 alternative retail electric suppliers, and electric  
4 customers. It does not mention Staff proposing a  
5 rule. Staff would be glad to comment and participate  
6 in any workshops, but it doesn't currently plan to  
7 propose any rules in this proceeding at this point.

8 MR. MOORE: Does that mean the Commission would  
9 then have to adopt one or more parties' proposals  
10 into something final? I'd like to have a better  
11 sense of where it's going.

12 MS. SCARSELLA: I'm not sure -- I mean, if  
13 everyone, you know -- if parties who are interested  
14 wish to, you know, propose a rule, we can do  
15 workshops on those rules and perhaps come up with a  
16 rule to put forth for notice and comment. But, you  
17 know, I guess that's what we're debating now, how to  
18 proceed when we get to that point.

19 MS. HUIZENGA: This is Karen Huizenga with  
20 MidAmerican. I believe the suggestion on the part of  
21 Ameren -- and correct me if I'm wrong -- is that the  
22 first workshop maybe would be for all parties to

1     decide what the parameters are for the rules and then  
2     maybe that would be a good point when we have a  
3     feeling for the legal background and the parameters  
4     that we would then file the suggested rules.

5           MS. EARL:   Well, I guess the thought is that  
6     the workshops, if there is going to be a briefing  
7     schedule -- and I'm not sure whether or not that's  
8     still on the table -- but the workshops would be  
9     helpful to get to that point where we can actually  
10    brief the issues or provide testimony on the issues.  
11    I see the workshops as just a starting point just so  
12    that the parties are able to communicate informally  
13    about the issues before it gets to any -- before  
14    testimony is submitted.

15           JUDGE GILBERT:   Let's go off the record for a  
16    moment.

17                               (Whereupon, a discussion was had  
18                               off the record.)

19           JUDGE GILBERT:   We're back on.

20                               I have the following petitions to  
21    intervene:   The Ameren Companies including CIPS,  
22    CILCO and IP; the Cook County State's Attorney;

1 MidAmerican; CUB; Dynegy; Constellation New Energy;  
2 Mt. Carmel; ComEd; Attorney General; the Industrials  
3 and now ELPC.

4 Does anyone object to any of those  
5 intervention petitions?

6 Okay. All of those are granted.

7 Does anyone know who KO Solutions  
8 might be?

9 MR. DETWEILER: That's Mary O'Toole. That's  
10 ComEd basically.

11 MR. PABIAN: She's not a separate party; she's  
12 just on the service list.

13 JUDGE GILBERT: Okay. What's KO?

14 MR. PABIAN: That's Mary's company.

15 MR. KELTER: Knock out.

16 MR. XENOPOULOS: Your Honor, this is Damon  
17 Xenopoulos for Nucor Steel. We filed a motion  
18 yesterday. Apparently you don't have a copy.

19 MR. MOORE: That was in the docket. I saw that  
20 in E-docket yesterday afternoon.

21 JUDGE GILBERT: Now, who was your client again,  
22 please?

1           MR. XENOPOULOS:   Nucor Steel.

2           MR. MOORE:   Nucor Kankakee.

3           JUDGE GILBERT:   Nucor Steel.

4           MR. XENOPOULOS:   Kankakee.

5           JUDGE GILBERT:   In Kankakee.

6           MR. XENOPOULOS:   It's actually Nucor Steel

7   Kankakee, Inc.

8           JUDGE GILBERT:   And did you already file,

9   Mr. Xenopoulos?

10          MR. XENOPOULOS:   Yes, I did, your Honor,

11   yesterday.

12          JUDGE GILBERT:   Any objections?

13          MR. MOORE:   It's in E-docket.

14          JUDGE GILBERT:   They're granted as well.

15          MR. XENOPOULOS:   Thank you, your Honor.

16          JUDGE GILBERT:   I think that's it.   We are

17   continued until August 1st at 11:00 a.m.

18                               (Whereupon, the above-entitled

19                               matter was continued to

20                               August 1, 2006, at 11:00 a.m.)

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22